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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,827	07/31/2006	Takeyuki Shiomi	3335-00013	3994
26753 7590 10/25/2010 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
10/25/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,827

Applicant(s)

SHIOMI ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-56 and 58-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-56 and 58-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2, 2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 52-56 and 58-61 have been considered but are not persuasive. As to the argument that sheets 5,7 disclosed by Takao overlap one another and do not provide an opening to the topsheet, the applicant is referred to Page 5, Fig. 2 of Takao. This figure clearly shows an opening above sheet 9 between the portions wherein sheets 5,7 overlap. Claim 1 only requires that the first and second sheets having ends facing each other in the length direction so as to define an opening therebetween. As to the argument that sheet 9 does not block access in the height direction to the topsheet, it is the examiner's position that access in the height direction entails placing the user's penis in the article in a vertical motion, i.e. in the height direction. This limitation is interpreted in light of the applicant's specification. Since there still must be a space into which the user places his penis, the auxiliary sheet can and must only block access in a portion of the opening. The auxiliary sheet 9 disclosed by Takao is clearly shown in Fig. 2 on page 5 as blocking any access to the top sheet 2 in the back/bottom of the article by the user's penis in the height direction in that particular portion of the opening between the sheets 5,7. Applicant also argues that the examiner is

merely relying upon opinion in the rejection of claim 57, now cancelled, regarding the limitation of an impermeable auxiliary sheet has been added to claim 52. The examiner clearly states in the rejection of claim 57 that the purpose of the auxiliary sheet, just as any outer-facing sheet in that article, is to contain exudate and prevent it from leaking onto the user's skin or undergarment. The gather sheets 5,7 also provide this purpose. A liquid-impermeable sheet prevents exudate from escaping and so the use of such material would be readily apparent to one of ordinary skill in the art. This is not the examiner's opinion. Pursuant to *Graham v John Deere*, a crucial part of establishing a *prima facie* case of obviousness in a rejection under 35 U.S.C. 103 by the examiner is "resolv[ing] the level of ordinary skill in the pertinent art." It is the examiner's position that using liquid-impermeable material for the auxiliary and gather sheets (or any sheet blocking leakage or containing exudate) is well within the level of ordinary skill of one in the pertinent (i.e. absorbent article) art and is a practice so widely known in the art as to not necessitate a secondary reference explicitly mentioning such a widely known practice. As to the argument regarding claim 53 that the auxiliary sheet is located on the other side of the opening relative to the first end of the topsheet in the length direction, the examiner is including below an annotated version of Fig. 2 on page 5 of Takao to clearly establish what the examiner considers the length, width and height directions in the article.

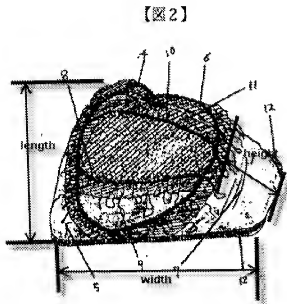


Fig. 2 of Takao (annotated by examiner)

It can clearly be seen from this annotated figure that the auxiliary sheet 9 is located on the other side of the opening relative to a first end of the topsheet in the length direction. The topsheet has four sides defining four ends and one of those ends is necessarily opposed to the sheet in the length direction.

3. Applicant's arguments with regard to dependent claims 54-56 and 58-61 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claim 52, which have been addressed *supra*.

Drawings

4. The drawings were received on November 2, 2009. These drawings are accepted.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 52-56, 58, 59 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takao (JP H08-001058 U).

With respect to **claim 52**: Takao discloses an absorbent pad for men comprising the following: an absorbent member 3 extending in a length direction, in a width direction that is generally transverse to the length direction, and in a height direction that is generally transverse to the length direction and generally transverse to the width direction (Claim 1, Figs. 1,2); a liquid permeable top sheet 2 disposed above the absorbent member 3 in the height direction (Claim 1, Fig. 2); a back sheet 1 disposed below the absorbent member 3 in the height direction (Claim 1, Fig. 2); first and second liquid impermeable gather sheets 7,5, respectively, disposed above the top sheet 2 in the height direction and having ends that face each other in the length direction so as to define an opening therebetween (Page 5, Fig. 2); and an auxiliary sheet 9 for diffusing liquefied excrement disposed above the top sheet 2 and below both of the first and second gather sheets 7,5 in the height direction; wherein the auxiliary sheet 9 has a first end disposed

between the top sheet 2 and the first gather sheet 7 in the height direction and a second end disposed between the top sheet 2 and the second gather sheet 5 in the height direction so as to define a genital holding space surrounded by the top sheet, the second gather sheet and the auxiliary sheet. (Page 5, Fig. 2) Examiner's position regarding whether the auxiliary sheet diffuses excrement is based upon the fact that the sheet meets all of the structural limitations of claim 52 and is thus fully functional to diffuse liquid excrement.

Takao does not disclose that the auxiliary sheet is liquid impermeable. However since the sheet contains excrement and prevents leakage and the use of liquid-impermeable sheet materials for features such as leakage barriers, gasket cuffs and backsheets is well known in the art, all of which being features that prevent leakage and soiling, it would be obvious to one of ordinary skill in the art to modify the article of Takao such that the auxiliary sheet 9 is liquid-impermeable with a reasonable expectation of success.

With respect to **claim 53**: The top sheet 2 disclosed by Takao extends between first and second ends in the length direction and wherein the first end of the auxiliary sheet is located between the first end of the top sheet 2 and the first gather sheet 7 in the height direction and wherein the second end of the auxiliary sheet is located on the other side of the opening relative to the first end of the top sheet in the length direction. (Page 5, Fig. 2)

With respect to **claim 54**: The second end of the auxiliary sheet 9 is located between the opening and the second end of the top sheet in the length direction, wherein the second end of the topsheet is the lowermost edge of the article on Fig. 2 on Page 5. (Page 5, Fig. 2)

With respect to **claim 55**: The second gather sheet 5 is longer in the length direction than the

first gather sheet 5 so that the opening is not centered above the absorbent member in the length direction. (Page 5, Fig. 2, Page 6, Fig. 3)

With respect to **claim 56**: The auxiliary sheet 9 disclosed by Takao is separate from the top sheet 2.

With respect to **claim 58**: Takao discloses that the absorbent member is triangular and thus does not disclose that the absorbent member is rectangular. It is examiner's position, however, based upon the configuration of the device in Fig.3 of Page 6 that Takao fairly suggests a rectangular absorbent member as such a member would easily conform to the structure and the anatomy of the user. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Takao such that the absorbent member is rectangular instead of triangular with a reasonable expectation of success to ensure that the member will conform easily to both the profile of the device and the anatomy of the user to perform its intended function.

With respect to **claim 59**: The absorbent pad for men disclosed by Takao comprises an elastic member 8 on the second end of the auxiliary sheet 9. (Page 5, Fig. 2)

With respect to **claim 61**: The absorbent pad for men disclosed by Takao comprises an elastic member 4 provided on the end of the second gather sheet. (Page 5, Fig. 2)

8. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takao ('058) in view of any one of Cinelli et al (U.S. Patent Application Publication No. 2002/0128614), Schmitz et al (U.S. Patent Application Publication No. 2002/0032427) and D'Acchioli et al (U.S. Patent No. 6,951,552), each one individually.

With respect to **claim 60**: The absorbent pad for men disclosed by Takao comprises a pair of elastic members 4,6, one on the end of the first gather sheet 7 and the second on the end of the second gather sheet 5. Thus, Takao does not explicitly disclose a pair of elastic members on the end of the second gather sheet. However it is as well known in the art to provide a single elastic member in a gather as it is to provide a pair or several elastic members as supported by each one of Cinelli et al ('614, ¶10151), Schmitz et al ('427, ¶10058), and D'Acchioli et al ('552, Col. 10, lines 30-35) As these elastics provide gathers which impart the gasketing and leakage prevention function, it would be obvious to one of ordinary skill in the art to modify the article of Takao such that the pad instead comprises a pair of elastic members at the end of the first gather sheet with a reasonable expectation of success to provide a gathering means to define the pocket and contain incoming excrement.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761